

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 306 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MIHIR TEXTILES LTD

Versus

COMMISSIONER OF INCOME TAX

Appearance:

NOTICE SERVED for Petitioner

MR B.B.Naik for M.R. BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 12/03/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal has referred the following two questions at the instance of the assessee and the third question at the instance of the Revenue, for the opinion of this Court under section

256(1) of the Income-tax Act, 1961.

At the instance of the assessee:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that provisions of section 40(c) of the Income-tax Act were applicable in respect of the entire remuneration paid to the Managing Directors of the Company even though the remuneration paid was in accordance with the business requirements of the Company?"

"2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that commission paid to the Managing Directors was includable in computing the total remuneration for purposes of section 40 (c) of the I.T. Act?"

At the instance of the Commissioner:

"Whether, the Tribunal was right in law in holding that (a) house rent allowance (b) compensatory allowance and (c) conveyance allowance did not form part of "perquisites" for purposes of disallowance under section 40A(5) of the I.T. Act?"

2. The matter relates to the assessment year 1980-81. The I.T.O. in the course of assessment proceedings rejected the contention of the assessee company that the provisions of section 40(c) of the said Act should not be invoked and nothing should be disallowed from the remuneration paid to the Managing Directors which was an expenditure wholly and exclusively for the purpose of business of the company. The alternative contention that while computing disallowance under section 40(c) of the said Act, the amount of the commission paid to the Managing Director should be excluded was also rejected. This came to be confirmed by the CIT (Appeals) and the same was the view taken by the Tribunal in the second appeal. In the same assessment proceedings, the ITO came to the conclusion that the house rent allowance, compensatory allowance and conveyance allowance granted by the assessee company to its employees should be added back while computing the disallowance under section 40(A)(5) of the Act. This view was confirmed by the CIT (Appeals). The Tribunal however, accepted the contention of the assessee relying on its own earlier orders and came to the conclusion that

cash allowances paid to the employees should not be termed as perquisites for the purpose of disallowance under section 40(A)(5) of the Act. It appears that the alternative submission was made before the Tribunal that such cash allowances to the employees should be treated as salaries but the Tribunal held that this question did not arise for adjudication in view of its decision on the main ground that cash allowances to the employees of this nature were not perquisites. That has given rise to the third question at the instance of the Revenue.

3. As regards the first two questions which are referred at the instance of the assessee, the matter stands covered by the decision of this Court in the case of Gujarat Steel Tubes Ltd. vs. CIT, reported in 210 ITR, 358 in which it was held that the phrase "any remuneration, benefit or amenity" occurring in section 40(c)(i) of the Act is of wide ambit and it covers benefits or amenities in cash or in kind. This decision was followed in CIT vs. Synpol Products Pvt.Ltd., reported in 217 ITR, 154 and in CIT vs. Raipur Manufacturing Co.Ltd. reported in (1996) 132 ITR, 63. Similar view has been taken by this Bench yesterday on 11.3.1998 in ITR 277 of 1987. We therefore, hold that the Tribunal was right in holding that the provisions of section 40(c) were applicable in respect of the remuneration and commission paid to the Managing Directors. The first two questions referred at the instance of the assessee are therefore, answered in the affirmative against the assessee.

4. As regards the payment of allowances directly to the employees not being perquisites under section 40(A)(5) of the Act, that question is covered by a decision of the Supreme Court in CIT vs. Mafatlal Industries reported in 219 ITR, 644 in which the Supreme Court has held that cash payments by an assessee to its employees do not fall within the ambit of section 40(A)(5)(a)(ii) of the Act as they are not perquisites for the purpose of disallowance under the said provisions. The third question which is referred at the instance of the Commissioner is therefore, answered in the affirmative against the Revenue. The Reference stands disposed of accordingly with no order as to costs.

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